

IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No. 5813/Mum/2018 (Assessment Year 2011-12)

Persil Embroideries Pvt. Ltd. 425, Kalingandas Udyog Bhavan, Century Bazar Lane, Prabhadevi, Mumbai-400025. <b>PAN: AAACP4617K</b>	Vs.	ITO-7(3)(3) 1 <sup>st</sup> Floor, Aayakar Bhavan, Mumbai.
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Appellant

Respondent

Appellant by : Shri K.K. Lalkaka (AR)  
Respondent by : Shri Awungshi Ginsen (CIT-DR)  
Date of Hearing : 22.04.2019  
Date of Pronouncement : 22.05.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under section 253 of Income-tax Act ('Act') is directed against the order of Id. Commissioner of Income-tax (Appeals)-13, Mumbai [hereinafter referred as Id. CIT(A)] dated 16.07.2018 for Assessment Year 2011-12. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the CIT (Appeals) has erred in sustaining the order of Assessing Officer by holding that the appellant is not entitled to vacancy allowance under section 23(1)(c) of the Income-tax Act although appellant satisfies all the requisite conditions entitling the appellant to vacancy allowance under section 23(1)(c).
2. Brief facts of the case are that initially, the assessment was completed under section 143(3) on 28.03.2013. The assessment was revised by Id.

CIT-7, Mumbai under section 263 on 29.03.2016. the Id CIT while revising the assessment order held that order passed by Assessing Officer on 28.03.2013 was erroneous and prejudicial to the interest of revenue on two issues, firstly rental income of Rs. 8,97,052/- from Oberio accommodation was reduced from income under the head 'Business & Profession'. Secondly, the assessee made investment in Kalpataru Homes accommodation that an amount of Rs. 84,43,900/- but the assessee not offered any rental income from the said property. The Assessing Officer in compliance of the direction of Id. CIT(A) passed the fresh assessment order under section 143(3) r.w.s. 263 on 09.09.2016. The Assessing Officer while passing the assessment order determined the Annual Letting Value (ALV) of Oberoi Woods Accommodation of Rs. 5,21,452/- and after granting deduction @ 30% under section 40A and interest under section 24b of Rs. 5,94,852/- determined the loss of Rs. 2,29,834/- (*which is not the subject matter of this appeal*).

3. For second property i.e. Kalpataru Homes, the Assessing recorded that the assessee made investment of Rs. 84,43,900/-, however, no income was offered from this property. The assessing officer recorded that the assessee had admitted that this property has been let out @ Rs.70,000/- p.m. in last three years. Accordingly, the assessing officer estimated annual letting value (ALV) of Rs. 84,000/- and after granting deduction

under section 24(a) of 30% of Rs. 2,52,000/- , the notional income of Rs. 5,88,000/- was worked out and added under the head 'Income from House Property'.

4. On appeal before Id CIT(A) the addition was confirmed vide impugned order dated 16.07.2018. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
5. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Department Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee submits that assessee-company owned residential premises in co-operative society and known as Kalpataru Homes Accommodation. The said residential premises were let out of Mearsk India Ltd. for a period of three years from November 2006 to October 2009. Thereafter, the premises were lying vacant during the entire Assessment Year. The income under the head 'Income from House Property' was offered for taxation on the ground of property which was let out in Assessment Year 2010-11 was vacant throughout the year and therefore, the assessee was entitled for vacancy allowance under section 23(1)(c). The Assessing Officer has not granted vacancy allowance under section 23(1)(c) despite furnishing documentary evidence in the form of broker's note and substantiated that it could not be let out despite all possible efforts. The Id. AR of the assessee further submits that the

assessee has now filed application for admission of additional evidence vide application dated 16.04.2019. In the application for admissions of additional evidences the applicant/assessee stated that subject matter of appeal is disallowances of vacancy allowance under section 23(1)(c) on the ground that the said section is not applicable in view of the decision of Hon'ble Andhra Pradesh High Court in Vivek Jain vs. ACIT 9337 ITR 74) (AP). The applicant/assessee further stated that the assessee is relying on the decision of Mumbai Tribunal in case of Informed Technologies India vs. DCIT [54 ITR 397 (Mum.)] wherein the Tribunal has distinguished the decision of Hon'ble Andhra Pradesh High Court in Vivek Jain (supra). The assessee further stated that in the form of additional evidence, they are furnishing confirmative statement of all Directors reciting their residential address to establish that the said residential flat was not used for self-occupation. The ld. AR of the assessee made his submission on the lines of contents of application.

6. On the other hand, the ld. DR for the revenue supported the order of lower authorities. In reply to the submission of ld. AR on the application for admission of additional evidence, the ld. DR submits that the assessee has not fulfilled the condition for admission of additional evidence. The ld DR submits that no sufficient cause is shown in the application as to why these evidences were no furnished before the lower authorities.

7. In the rejoinder submission the Id. AR for the assessee submits that except the confirmation of the Directors of the assessee all other evidences were furnished, however, the assessing officer has not discussed those evidences in his order.
8. We have considered the submission of both the parties. First we shall decide the application for admission of additional evidence. During the assessment, the assessee contended that the property was let out to M/s Maersk India Limited for three years from October 2006 to October 2009 and that they are entitled for vacancy allowances under section 23(1)(c). The contention of assessee was not accepted by Assessing Officer. The Assessing Officer determined the ALV by taking a monthly rental value of Rs. 70,000/- holding that the assessee has admitted that property was let out in last three consecutive years. The Assessing Officer has not specified as to how and on the basis of which document, he has come to the conclusion of accepting/adopting a rental value of Rs. 70,000/- per month. Before the Id. CIT(A), the assessee again urged that the said residential premises was let out to Mearsk India Ltd. for a period from November 2006 to October 2009. Thereafter, premises were lying vacant during the entire Assessment Year, no income was offered under the head 'Income from House Property' and that the assessee is entitled for vacancy allowance. The Id. CIT(A) also not accepted the contention of assessee and not allowed the vacancy allowance by

following the decision of Hon'ble Andhra Pradesh High Court in Vivek Jain ACIT (supra).

9. Before us, the Id. AR of the assessee vehemently submitted that the Assessing Officer despite granting sufficient evidence has not allowed the vacancy allowance, the property remained vacant for whole of the year and that the assessee furnished sufficient evidences to substantiate its contentions. Before us, the assessee has filed application for additional evidence, furnished the copy of confirmation of Directors of the assessee-company confirming that they were not residing at the address given on confirmation letter and that the Kalpataru Homes Accommodation was lying vacant during the entire period from 01.04.2010 to 31.03.2011. The assessee has also furnished the copy of latter of Estate Consultant dated 02th May 2011 and the copy of the electricity bills from March 2010 to 2011.
10. Considering the relevancy of evidence qua the submission of assessee before the Assessing Officer, the Id. CIT(A) as well as before the Tribunal that Kalpataru Homes Accommodation premises were lying vacant throughout the entire period. The assessee has also furnished the copy of electricity bill from April 2010 to March 2011 showing negligible consumption of electricity, besides that the assessee has also filed copy of confirmation by Kamla Thakkar, Broker certifying that he has been continuously making effort for leasing out the demise

premises. Therefore, on considering the relevancy of evidence furnished by assessee, we admit the additional evidence and restore the matter to the file of Assessing Officer to consider the additional evidence as well as other evidences furnished by assessee and pass the order afresh in accordance with law. Needless to say that before passing the order, the Assessing Officer shall grant opportunity to the assessee. In the result, ground of appeal raised by assessee is allowed for statistical purpose.

11. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 22/05/2019.

**Sd/-**

**G.S. PANNU**

**VICE-PRESIDENT**

Mumbai, Date: 22.05.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**